

10 September 19<sup>54</sup>

STATINTL

MEMORANDUM FOR:

Special Assistant to the DD/A

SUBJECT : Per Diem Allowance During Headquarters Debriefing Period for Employees Returning from Overseas for Home Leave and PCS Transfer to Washington

REFERENCE : Memo, std. 18 Aug. 54, to SA/DD/A fr OGC, same subject

1. You will recall that, in the referenced memorandum, this office dealt with the question of whether an Agency employee who was being returned from overseas for home leave and PCS transfer to headquarters could be allowed per diem for a period of debriefing and consultation in headquarters prior to his going on home leave. In paragraph 2 of that memorandum, we took the position that per diem was not allowable in these circumstances. We based this opinion on paragraph 46 of the Standardized Government Travel Regulations and on the well known rule in Government that per diem is not payable at a permanent duty station (5 Comp. Gen. 874 (1926); 24 Comp. Gen. 593 (1945)).

2. Since the date of this memorandum, a decision of the Comptroller General has come to our attention which, contrary to the general rule, would appear to authorize payment of per diem in the cited circumstances. In 31 Comp. Gen. 439 (1952) the Comptroller General passed on a similar situation posed by the Department of State. In contending for the payment of the per diem, the Department cited Section 103.607(g) of the Foreign Service Regulations which authorizes payment of per diem to foreign service officers who are being returned from overseas for home leave and transfer to the Department in Washington and were called into the Department for consultation prior to their going on home leave and prior to their assumption of duties in Washington. On page 440 of the opinion, there is stated, inter alia:

"The case here involved may be distinguished from those in the decisions referred to, and others falling within the scope of the general rule, since under the administrative practice described . . . . the employee's presence in Washington for consultative purposes is not related or incident to his assumption of permanent duty at that place upon completion of his statutory leave, it being evident that he would be required to report for temporary duty in Washington regardless of whether that city was to be his future permanent station or not."

We add that, while the Comptroller General took no specific position in the length of time for which the per diem was authorized, it was the practice of the Department to authorize it:

"for a period not to exceed five working days unless the period extended into two work weeks in which event per diem was authorized in the intervening week end."  
(31 Comp. Gen. 439)

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3. For some time past, it has been the policy of this Agency to have employees who are returning from overseas for home leave and PCS transfer to headquarters come to headquarters for debriefing prior to their going on leave. Per diem has been paid for these periods under the authority of [redacted] Paragraph 4-a(5) thereof, and predecessor regulations.

4. On the basis of the foregoing, it is the opinion of this office that per diem for the periods of consultation in headquarters may be paid to employees of this Agency who are being returned from overseas on home leave and PCS transfer to headquarters providing there is appropriate authority for such payment in the transfer orders and providing consultation is held prior to the employee's assumption of his duties in headquarters pursuant to his new assignment. As for the length of time for which per diem should be allowed, we believe that the cited practice in the State Department is an adequate guide. To the extent that this memorandum differs in substance from our memorandum of 18 August 1954, you may be guided by this one.

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[redacted]  
Office of General Counsel